

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FANTAGRAPHICS BOOKS, INC.,

Plaintiff,

v.

EMIL FERRIS,

Defendant.

No. 2:21-cv-00802-JCC

JOINT STATUS REPORT

EMIL FERRIS,

Counter-Claimant,

v.

FANTAGRAPHICS BOOKS, INC.,

Counter-Defendant.

Pursuant to the Court's Order dated August 24, 2021 (Docket No. 17), Federal Rule of Civil Procedure 26(f) and Local Civil Rules 16(a)(2) and 26(f), counsel for the Parties respectfully submit this Joint Status Report with respect to this case.

## **1. BACKGROUND**

### **a. Parties**

The plaintiff is Fantagraphics Books, Inc. ("Fantagraphics"), a book publishing company based in Seattle, Washington. The defendant is Emil Ferris ("Ms. Ferris"), an author and artist based in Illinois.

### **b. Subject of the Action**

In late 2015 the parties agreed that Fantagraphics would publish Ms. Ferris' graphic novel entitled MY FAVORITE THING IS MONSTERS ("MONSTERS"), and on January 12, 2016 they entered into a Publishing Agreement ("Publishing Agreement") for that publication. By this action, Fantagraphics seeks a Declaratory Judgment with respect to the interpretation of the Parties' agreement. In her Answer, Ms. Ferris has asserted counterclaims for "Breach of Contract," "Breach of the Covenant of Good Faith and Fair Dealing," and "Declaratory Judgment."

### **c. Counsel**

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**d. Rule 26(f) Conference**

Pursuant to the above referenced Court Order, on November 29, 2021, the Parties, by their above-named counsel, conducted an extensive Rule 26(f) conference by video call.

**e. Summary of Claims****A. Fantagraphics' Statement.**

In or about August 2015, Ferris through her literary agent Holly Bemiss ("Bemiss"), submitted to Fantagraphics a very long (more than 600 pages) manuscript for MONSTERS. Responding to Fantagraphics' concern about its length, Bemiss wrote: "[Ferris] is open to releasing this as one big book or two volumes. She has ideas as to how best to split the book, but does want to find an editor who really knows comics, and will be her guide." The parties' Publishing Agreement, titled "PUBLISHING AGREEMENT[:] MY FAVORITE THING IS MONSTERS," is annexed to the Complaint as Exhibit A.

The parties agreed that MONSTERS was too long to be successfully published in a single volume and that it would therefore be published in two separate volumes. Acting as Ferris' agent (and thus binding on Ferris), Bemiss confirmed and publicly announced the parties' agreement as follows (emphasis added):

Gary Groth at Fantagraphics acquired world rights to My Favorite Thing Is Monsters, by Emil Ferris. Drawn as the journal of a ten-year-old girl, the story follows her attempt to solve the mystery of the death of her beloved neighbor, a Holocaust survivor. Ferris's drawings reflect a world where the monstrous is beautiful, and where goodness is found in the most unlikely places. The 600+ page, four color graphic novel will be published in 2 volumes, beginning in

1        September 2016. Holly Bemiss of the Susan Rabiner Literary Agency closed the  
2        deal.

3        After the publication date of the first volume was set, the parties further agreed that “Book  
4        2” -- as Ferris consistently called it -- would be published in July 2017. With no objection from  
5        Ferris or Bemiss, Fantagraphics prominently announced that July 2017 publication date for Book  
6        2 in its catalogue for that publishing season. Fantagraphics published the first volume of  
7        MONSTERS in February 2017, with its title page stating: “MY FAVORITE THING IS  
8        MONSTERS[:] BOOK ONE.”

9        In early 2016, more than a year before the agreed July 2017 publication date for Book 2,  
10        Ferris advised Fantagraphics that she wanted to “polish” (her word) the remaining part -- 222  
11        manuscript pages -- of MONSTERS before it was published on the announced date. Relying on  
12        her promise to deliver her polished version of Book 2 to Fantagraphics in time to have it published  
13        on the announced July 2017 date, Fantagraphics agreed to Ferris’ request to polish it. In this  
14        connection, Fantagraphics and Ferris understood that Book 2 of MONSTERS had already been  
15        submitted to Fantagraphics for publication, was publishable as submitted, and was under contract  
16        for publication.

17        However, Ferris failed to meet her promised delivery-date for her polished Book 2, thus  
18        thwarting its announced July 2017 publication date. And thereafter, throughout 2016, 2017, 2018,  
19        and 2019, Ferris repeatedly promised to deliver to Fantagraphics her polished Book 2 for its newly-  
20        set publication dates but then repeatedly failed to keep those promises. During the entirety of those  
21        four years, Ferris a) repeatedly confirmed that she “owed” Book 2 to Fanta-graphics and intended  
22        to get it to Fantagraphics, b) repeatedly approved Fantagraphics’ successive announcements of  
23        new publication dates for that volume, c) knowingly approved and accepted advance payments for  
24        contracted-for foreign editions of Book 2, d) created and sent to Fantagraphics a proposed cover  
25        for Book 2, and e) never once questioned that Fantagraphics had the right to publish that volume  
26        under the Publishing Agreement.

1 Beginning in 2020, however, apparently as a ploy to extract money from Fantagraphics to  
2 induce her to “allow” it to publish Book 2, Ferris for the first time asserted that Fantagraphics did  
3 not have the right to publish Book 2. Thereafter, that claim was reiterated by her current lawyers  
4 in “Rule 408” “Cease and Desist” letters. This action for a Declaratory Judgment declaring Fanta-  
5 graphics’ right to publish Book 2 was commenced in June 2021.

6 In her Answer, Ferris affirmatively asserted -- albeit explicitly premised on Ferris’  
7 “suspicions” -- one counterclaim for alleged “Breach of Contract,” one for alleged “Breach of the  
8 Covenant of Good Faith and Fair Dealing,” and one for “Declaratory Judgment.” Fantagraphics  
9 had denied all those claims.

10 B. **Ms. Ferris’ Statement:**

11 The Parties’ relationship is governed by the plain text of the Publishing Agreement. That  
12 Agreement, by its own terms, covers only one book, MY FAVORITE THING IS MONSTERS  
13 Book 1 (Monsters Book 1), which Fantagraphics has already published. The Publishing Agreement  
14 does not mention a Book 2. It defines and references “the book” in the singular throughout. It also  
15 includes only one delivery date and one publication date. So, while Ms. Ferris always intended to  
16 finish the story arc of Monsters Book 1, and the Parties hoped and planned that Fantagraphics  
17 would publish MY FAVORITE THING IS MONSTERS Book 2 (“Monsters Book 2”), Ms. Ferris  
18 is not legally obligated—by the Publishing Agreement or otherwise—to follow through with that  
19 initial plan. Simply put, a plan or desire to do something does not create a legal obligation. The  
20 Publishing Agreement does not speak to Book 2, and that is the end of the story on the declaratory  
21 judgment claims.

22 Ms. Ferris also asserts claims for breach of contract and breach of the covenant of good  
23 faith and fair dealing based on Fantagraphics’ persistent underpayments of royalties, efforts to  
24 thwart the audit Ms. Ferris is entitled to under the Publishing Agreement, late payments, threats to  
25 publish draft pages from her original manuscript as Book 2 and other acts by Fantagraphics.  
26

1 Ms. Ferris has suspected for some time that Fantagraphics has been underpaying her. For  
2 example, Section 3(a)(vii) of the Publishing Agreement provides that Fantagraphics will pay Ms.  
3 Ferris 50% of the amount received from e-book sales. Yet Ms. Ferris' royalty statements indicate  
4 she is paid no more than 25% for royalties from e-book sales. Ms. Ferris also believes that  
5 Fantagraphics failed to properly account for its sale and licensing of Monsters Book 1 to libraries,  
6 including online libraries, which further reduced Ms. Ferris' royalty payments. Fantagraphics has  
7 also breached the Publishing Agreement by delivering late and incomplete royalty statements, in  
8 violation of Section 8(c) of the Agreement. She also believes Fantagraphics has sold English  
9 language versions of Monsters Book 1 outside of the territory specified in the Publishing  
10 Agreement

11 Finally, Fantagraphics has repeatedly thwarted Ms. Ferris's attempt to audit Fantagraphics  
12 financial records relating to Monsters Book 1, a right she is afforded under Section 9 of the  
13 Publishing Agreement. Ms. Ferris told Fantagraphics as early as 2018 that she would like more  
14 information about its accounting practices. Twice Ms. Ferris hired accounting firms to effect her  
15 rights under Section 9, but each time Fantagraphics made unwarranted demands of Ms. Ferris and  
16 the auditors that effectively prevented the audit from proceeding. To this day, Fantagraphics  
17 insists that the audit cannot go forward without a court-ordered two-tiered Protective Order that  
18 would allow them to shield from her documents relevant to her royalty calculations, something  
19 Section 9 of the Parties' agreement does not contemplate. Indeed, Section 9 permits Ms. Ferris to  
20 audit Fantagraphics' accounting records personally. Fantagraphics' insistence that Ms. Ferris sign  
21 away legal rights in order to exercise her rights under the Parties' agreement is a breach of Section  
22 9 of the Agreement.

23 Fantagraphics' actions go beyond mere breach of contract and amount to bad faith and  
24 unfair dealing. Fantagraphics' has used the Publishing Agreement and its relationship with Ms.  
25 Ferris to gain power and leverage over her for Fantagraphics' benefit. Specifically, Fantagraphics  
26 has violated the covenant of good faith and fair dealing by: using the Agreement to threaten Ms.

1 Ferris into giving Fantagraphics Monsters Book 2; threatening to publish incomplete draft pages  
2 from Monsters Book 1 as Monsters Book 2, which would harm Ms. Ferris' reputation and artistic  
3 integrity; filing this action in an attempt to coerce Ms. Ferris into giving it the rights to publish  
4 Monsters Book 2; and erecting unnecessary and unreasonable barriers to the audits that Ms. Ferris  
5 requested, and to which she was entitled under the Agreement.

6 Fantagraphics' breach of the Publishing Agreement suspends any obligations Ms. Ferris  
7 has under the Agreement. Therefore, even if the Court were to determine that the Publishing  
8 Agreement contemplates a second book, Fantagraphics has forfeited those rights through its failure  
9 to live up to its own obligations under the agreement. In cannot force her to live up to her bargain  
10 while it is itself in material breach.

11 In addition, Paragraph 9 provides that "If the Publisher fails to report sales or fails to pay  
12 the author the royalties due and does not resolve this within 60 days of notification by the Author  
13 or her agent, all rights will revert to the Author." Ms. Ferris has been questioning Fantagraphics'  
14 royalty calculations for years, most recently in her August 23, 2021 counterclaim for breach of  
15 contract. In the 60 days following her counterclaim, Ms. Ferris repeatedly requested an audit, but  
16 Fantagraphics has neither provided the audit nor resolved any of the questions Ms. Ferris raised in  
17 her counterclaim. Fantagraphics' refusal to provide the audit and to allow Ms. Ferris to effectively  
18 police the royalties she has been paid and get answers to her questions is a constructive failure to  
19 report sales. Accordingly, Ms. Ferris contends that Fantagraphics has forfeited any rights under  
20 the agreement, including to Book 1.

21 **f. Protective Order**

22 The Parties are negotiating a Protective Order and making good progress. They will report  
23 further to the Court in due course.

24 **g. Initial Disclosures**

25 The Parties served their initial disclosures on December 6, 2021, the deadline set by the  
26 Court.

1           **h. Insurance**

2           Neither party believes there is insurance coverage for any of the claims against it.

3           **2. LOCAL CIVIL RULE 26(f)(1) TOPICS**

4           **a. Possibilities for promptly settling the case (LCR 26(f)(1)(A))**

5                   ***A. Fantagraphics position.***

6           Fantagraphics believes that there is no currently foreseeable possibility for a prompt  
7 settlement of either aspect of this case.

8                           **1. Fantagraphics' Claim for a Declaratory Judgment**

9           With respect to Fantagraphics' (non-monetary) claim for a Declaratory Judgment  
10 interpreting the parties' Publishing Agreement, Ms. Ferris does not dispute that her agent, speaking  
11 for and binding her, unequivocally confirmed that the parties' Publishing Agreement provided that  
12 Ms. Ferris' "600+ page four color graphic novel will be published in 2 volumes." Ms. Ferris also  
13 does not dispute that for four full years after the Publishing Agreement was signed she consistently  
14 (by word and deed) confirmed and never once challenged that (binding-on-her) description of the  
15 Agreement. In fact, her current position -- which she first asserted in 2020 -- is entirely based on  
16 a demonstrably false rendition of the Agreement. Specifically, while she now claims that the  
17 Agreement somehow refers only to "Book 1" of MONSTERS, the undisputed fact is that the  
18 Agreement contains no reference whatever to "Book 1" and only refers to the work entitled MY  
19 FAVORITE THING IS MONSTERS, which obviously (and admittedly) means "the 600+ page  
20 four color graphic novel" that everyone agrees bore that title. Fantagraphics believes Ms. Ferris'  
21 four-years-later purported reversal -- by which she seeks to disown and completely contradict her  
22 prior admissions -- is simply a bad faith attempt to "extort" money from Fantagraphics by getting  
23 it to "buy" from her in "settlement" what she previously admitted it already owns. Fantagraphics  
24 declines to acquiesce to that attempt and "settle" that manifestly baseless claim. Any direction to  
25 compel a settlement process with respect to that claim would thus be both unproductive and a  
26 waste of valuable resources.



1 While, for the reasons stated above, Fantagraphics opposes a court direction compelling it  
 2 to participate in any ADR process with respect to its Declaratory Judgment claim, it adds here that  
 3 it has proposed to Ms. Ferris' counsel an approach to settlement that could resolve that claim to  
 4 her ostensible satisfaction without Fantagraphics having to "buy" from her rights it already owns.  
 5 However, Ms. Ferris has consistently rejected that proposed approach. (Contrary to Ms. Ferris'  
 6 false representations in this connection, Fantagraphics never suggested a new Publishing  
 7 Agreement, since any such is utterly unnecessary, but it did express openness to negotiated tweaks  
 8 to the current operative Agreement by way of addendums to it.)

9 Moreover, Fantagraphics further acknowledges that it believes it is hypothetically possible  
 10 that Ms. Ferris, in her begging for an immediate court-ordered settlement process -- which is  
 11 entirely consistent with what we believe is her "extortion" strategy -- may not actually demand that  
 12 Fantagraphics "buy" from her in "settlement" rights it already owns. To test that hypothesis, but  
 13 without involving a formal process, Fantagraphics invites Ms. Ferris' counsel to communicate to  
 14 it privately, shielded by Rule 408, the opening proposal it would make in any event in a formal  
 15 settlement process. Fantagraphics could then immediately know whether further settlement efforts  
 16 might be viable. Obviously, this new proposal presents no risk of any kind to Ms. Ferris and has  
 17 at least a hypothetical prospect of leading to further settlement activity.

## 18 2. Ms. Ferris' Counterclaims

19 With respect to Ms. Ferris' counterclaims, her own pleading candidly admits that those  
 20 claims are based entirely on her "suspicions" and nothing more. Here is that admission (from page  
 21 2 of her Answer, emphasis added)

22 Ms. Ferris **suspected** Fantagraphics was lying to her and underpaying her. She  
 23 requested an audit **to investigate these issues** and has been clear with  
 24 Fantagraphics that she would only discuss the terms for publication of Book 2 (if  
 25 at all) after the accounting and resolution of any issues it uncovers. The shortest  
 26 path for Fantagraphics to Book 2 was to allow the auditors Ms. Ferris hired to  
 review Fantagraphics' records as the contract stipulates. **If the audit revealed no  
 issues, Ms. Ferris' concerns would have been settled and the parties could have  
 moved on. Instead, Fantagraphics fought the audit then filed this lawsuit.**

1  
2 Contrary to Ms. Ferris' demonstrably false representations, Fantagraphics has consistently  
3 agreed to facilitate her requested audit, but Fantagraphics acknowledges that it also consistently  
4 refused to accede to her demand -- actually repeated in her pleading -- that she be free to publicly  
5 disclose any and every financial document provided by it for the audit. But now, and only since  
6 this litigation was commenced, Ms. Ferris has agreed to withdraw her free-to-disclose demand and  
7 as a result, as soon as a Protective Order is entered, the audit by her designated KPMG auditors  
8 can proceed immediately.

9 Ms. Ferris does not claim a single dollar of damages; only that she "suspects" that she may  
10 have such. Here too, Fantagraphics is convinced that Ms. Ferris' "counterclaims" are also just  
11 another bad faith attempt to "extort" money from Fantagraphics based only on her "suspicions"  
12 and Fantagraphics declines to acquiesce to that attempt and "settle" those (based only on  
13 "suspicions") counterclaims. Any direction to compel a settlement process with respect to those  
14 claims, at least at this time would also be both unproductive and a waste of valuable resources.  
15 Instead, it seems obvious that any possible settlement process with respect to Ms. Ferris'  
16 counterclaims should at a minimum await the outcome of that audit, since, to quote Ms. Ferris'  
17 own pleading, "[i]f the audit revealed no issues, Ms. Ferris' concerns would have been settled and  
18 the parties could have moved on [with nothing further to "settle"]."

19 B. *Ms. Ferris's position.*

20 Ms. Ferris has attempted to jumpstart settlement discussions several times since the case  
21 was filed, but Fantagraphics has declined to begin negotiations unless she first stipulates to  
22 judgment in Fantagraphics' favor. As Ms. Ferris understands Fantagraphics position, it is not  
23 asking that a stipulation in its favor be part of a potential settlement, but rather that it is a  
24 precondition to beginning settlement negotiations at all. This condition has thwarted informal  
25 settlement progress. Ms. Ferris is willing, as part of a global settlement, to give Fantagraphics'  
26 Book 2. But she will not agree to compromise her legal claims before negotiations begin.

1           **b.       Plans for alternative dispute resolution (LCR 26(f)(1)(B))**

2                   A.       *Fantagraphics' position.*

3           As its response to this issue, Fantagraphics incorporates here its full response in Paragraph  
4 2(a) immediately above.

5                   B.       *Ms. Ferris's position.*

6           Ms. Ferris implores the Court to order the Parties to mediation. Ms. Ferris believes this  
7 case is an excellent candidate for court-ordered mediation pursuant to LCR 39.1 for several  
8 reasons.

9           *First*, Ms. Ferris is committed to settling this case to avoid the extraordinary expense of  
10 litigation. Ms. Ferris is an individual. Litigating this case to trial could quickly bankrupt her.  
11 Indeed, engaging in full-blown discovery over a short period of time—as Fantagraphics  
12 envisions—will devastate her financially. She would rather focus on finishing Monsters Book 2—  
13 something that is in both Parties' interests—rather than spending her time on litigation efforts.  
14 Ms. Ferris understands that Fantagraphics is frustrated because it wants to publish Book 2 as soon  
15 as possible. Ms. Ferris is frustrated too; she would very much like to be done with the book, have  
16 it published, and be earning revenue from it. She is served in no conceivable way by delay in  
17 publication. Mediating this case as soon as possible gives the parties the best chance to reach the  
18 business solution that serves both Parties' interests.

19           *Second*, Ms. Ferris believes that the Parties are closer to a resolution than their current  
20 settlement stalemate might suggest. The Parties engaged in extensive correspondence prior to the  
21 Rule 26(f) conference. Due in part to a difference in communication styles among counsel and a  
22 lack of trust between the Parties, the negotiations did not gain traction. But they have discussed  
23 the elements of a successful settlement, and there are significant points of agreement. For example,  
24 Ms. Ferris is willing to publish Monsters Book 2 with Fantagraphics as part of a global settlement  
25 if the Parties can reach agreement on new publishing terms. Fantagraphics has agreed that the  
26 following terms require negotiation, among others: the advance Fantagraphics will pay Ms. Ferris

for Book 2 and a publication schedule for Book 2. Fantagraphics seems to agree that the Parties need to negotiate new contract terms around the release of Monsters Book 2, but its preconditions to negotiation would have Ms. Ferris compromise most of her legal rights before negotiations even begin. Ms. Ferris believes a neutral mediator could help bridge the gaps and help the Parties come to a mutually agreeable commercial resolution.

**c. The existence of any related cases (LCR 26(f)(1)(C))**

The Parties are unaware of any related case.

**d. A statement of how discovery will be managed (LCR 26(f)(1)(D))**

**A. Certain Expedited Discovery (Audit materials)**

Once a Protective Order is entered, and pursuant to it, the Parties have agreed to expedite certain financial discovery of Fantagraphics. This will enable Ms. Ferris to have her designated auditors, KPMG, conduct for her a formal “audit” of relevant financial documents. Once complete, KPMG will provide the results of the audit to both Ms. Ferris and to Fantagraphics, subject (as necessary) to the Protective Order.

It is Ms. Ferris’s position that she is entitled to the audit materials described in the foregoing paragraph pursuant to Section 9 of the Parties’ publishing agreement, and she should not have to rely on civil discovery to access those materials. She contends it is an ongoing breach of the Publishing Agreement and a breach of the covenant of good faith and fair dealing to withhold those audit materials or condition their disclosure on entry of a Protective Order or participation in litigation. Ms. Ferris reserves all rights with regard to the audit.

**B. Whether discovery should be phased (FRCP 26(f)(3)(B))**

**1. *Fantagraphics position.***

As discussed at Paragraph 2(d)(i) immediately above, it was Fantagraphics that affirmatively proposed that the contemplated audit of it -- as part of Ms. Ferris’ discovery in this litigation -- could be conducted on an expedited basis. Depending on the status of that audit at the relevant time, and assuming Fantagraphics can have a subsequent deposition of Ms. Ferris with

1 respect to her counterclaims, Fantagraphics is willing to limit its initial deposition of her to its  
 2 Declaratory Judgment claim against her. Otherwise, Fantagraphics believes all discovery should  
 3 be conducted and completed as the earliest possible time, without further “phasing.”

4 **2. Ms. Ferris’s position.**

5 Ms. Ferris believes that discovery should be phased to promote efficient resolution of this  
 6 case given the Parties’ resources. Ms. Ferris is an individual, and full-blown civil discovery will  
 7 quickly bankrupt her. And, as explained, Ms. Ferris is committed to settling this case and believes  
 8 the Parties can do so with the help of a skilled mediator. Given these considerations, Ms. Ferris  
 9 proposes the following approach to discovery:

10 *First*, the Parties complete expedited discovery of audit materials per the foregoing section.

11 *Second*, the Parties participate in mediation per Local Civil Rule 39.1(c). Discovery—  
 12 except the audit-related discovery—is stayed pending mediation, though the Parties may work in  
 13 good faith to exchange documents and information prior to the mediation to the extent that  
 14 exchange would facilitate a productive session. If the Parties can resolve the case in mediation,  
 15 they need not engage in expensive and time-consuming discovery.

16 *Third*, if the case does not resolve at mediation, the Parties will meet and confer on a  
 17 discovery plan and will submit that plan to the Court within 15 days of the mediation.

18 **C. Document Requests**

19 Subject to the Court’s approval, the parties agree that a) initial document requests, b) initial  
 20 interrogatories, and c) initial requests for admissions, be served by December 22, 2021, and that  
 21 the Parties discuss in good faith the staging and timing of their responses thereto.

22 Ms. Ferris proposes that the Parties complete audit-related discovery and mediation before  
 23 engaging in full-blown document discovery, for the reasons stated above.

1 D. Depositions

2 1. ***Fantagraphics position.***

3 Fantagraphics will take the depositions of Ferris and non-parties Holly Bemiss and Linda  
4 Bernard. Fantagraphics expects to take the depositions of the non-parties in January 2022 and of  
5 Ferris in February 2022.

6 2. ***Ms. Ferris position.***

7 Ms. Ferris proposes that the Parties complete audit-related discovery and mediation before  
8 engaging in other discovery, for the reasons stated above. Ms. Ferris requests that no depositions  
9 take place until after the mediation. Should the Court reject this phased approach, Ms. Ferris  
10 proposes that the Parties take the depositions of Ms. Bemiss and Ms. Bernard in February 2022.  
11 Ms. Ferris would then plan to take the deposition of Gary Groth and Fantagraphics in March or  
12 April 2022, depending on the status of document production.

13 E. Presenting discovery disputes to the Court by informal means

14 Should the need arise, the Parties anticipate utilizing Judge Coughenour's method of  
15 resolving discovery disputes informally via telephone. *See* Judge John C. Coughenour Chamber's  
16 Procedures § E.1.

17 F. Expert Witnesses

18 1. ***Fantagraphics position.***

19 Fantagraphics states that it does not currently anticipate the use of expert witnesses.

20 2. ***Ms. Ferris's position.***

21 Ms. Ferris anticipates hiring a damages expert and possibly also a publishing industry  
22 expert.

23 e. **The targeted discovery that each side anticipates seeking (LCR 26(f)(1)(E))**

24 A. ***Fantagraphics position.***

25 With the one addition set forth in the next sentence, Fantagraphics substantively agrees, on  
26 a reciprocal basis, to the subject areas of discovery set forth in Ms. Ferris' response immediately

below. The addition is that Fantagraphics will also seek discovery into drafts and other material reflecting the status and content of what Ms. Ferris calls “Book 2” of MONSTERS.

**B. *Ms. Ferris’s position.***

In addition to the audit materials described in § 2.d.3, Ms. Ferris anticipates seeking information in discovery relating to her defense of Fantagraphics’ declaratory judgment claim and her prosecution of her breach of contract, breach of good faith and fair dealing, and declaratory judgment claims. That information includes but is not limited to: all documents and correspondence relating to the Publishing Agreement; all documents and correspondence relating to the anticipated publication of Monsters Book 2; all documents and correspondence relating to Fantagraphics understanding of its rights and responsibilities regarding Monsters Book 2; all documents and correspondence relating to Fantagraphics’ use of third-parties to print and/or publish Monsters Book 1; all documents provided to KPMG as part of the audit; and all documents and correspondence relating to Fantagraphics’ distribution of Monsters Book 1 through all channels, including foreign distributors and e-commerce channels.

**f. Phasing motions to facilitate early resolution of potentially dispositive issues (LCR 26(f)(1)(F))**

**A. *Fantagraphics’ position.***

Fantagraphics believes the adjudication of its Declaratory Judgment claim against Ms. Ferris will require assessments of witness credibility and thus that adjudication will require a trial. Fantagraphics is open to the possibility that Ms. Ferris’ “breach” counterclaims could be adjudicated through motions at the completion of discovery into those claims.

**B. *Ms. Ferris’s position.***

The key issue on the declaratory relief claim is interpretation of the Parties’ Publishing Agreement and specifically (a) whether it grants Fantagraphics rights to publish a second book, and (b) if so, whether Fantagraphics may publish draft pages from the original manuscript and call it Book 2 as it has threatened to do, despite years of waiting for Ms. Ferris’ rewrite. Ms. Ferris

believes that Court can easily make that determination on summary judgment. She contends the contract itself clearly addresses only a single Book. Fantagraphics' purported evidence to the contrary is inadmissible parol evidence.

**g. Preliminary issues relating to the preservation of discoverable information (LCR 26(f)(1)(G))**

The Parties do not anticipate any issues relating to the preservation of discoverable information and the scope of the preservation obligation.

**h. Procedure for handling inadvertent production of privileged information (LCR 26(f)(1)(H))**

The Parties plan to include in their stipulated Protective Order a procedure for handling inadvertent production of privileged information. In particular, pursuant to Federal Rule of Evidence 502, the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

**i. Whether the case will involve the preservation and production of ESI (LCR 26(f)(1)(I))**

The Parties anticipate this case will involve the preservation and production of ESI. The Parties commit to negotiate an ESI order based on the model order proposed by the Western District of Washington.

**3. COURT-ORDERED TOPICS (DKT NO. 17)**

**a. Mediation**

**A. *Fantagraphics' Position.***

As its response to this issue, with respect to possible mediation, Fantagraphics incorporates here its full response at Paragraph 2(a) above.



1                   B.       *Ms. Ferris's Position.*

2           As stated above, Ms. Ferris believes that this case is an excellent candidate for mediation  
3 pursuant to LCR 39.1, and respectfully requests that the Court order the Parties to complete  
4 mediation in the short term, prior to substantial discovery. See LCR 39.1(c)(1).

5           b.       **Trial Date**

6                   A.       *Fantagraphics' Position.*

7           Fantagraphics believes the case can be ready for trial on June 1, 2022. In this connection,  
8 Fantagraphics notes that Ms. Ferris' lawyers have unambiguously pledged to "slow-walk" the  
9 progress of the case in every way they can. For one example, they spurned every Fantagraphics  
10 request for an early Rule 26(f) conference and insisted that the conference be held on the last  
11 possible date. This is how they first communicated that pledge/threat, in a September 21, 2021  
12 email to Fantagraphics' counsel:

13                   I will be transparent: We do not believe aggressive discovery and a fast trial are in  
14 Ms. Ferris' best interests and we will oppose them. She cannot afford a mad race  
15 to trial. If Fantagraphics insists on litigating, we will be choosing carefully what  
16 we invest time in going forward. In order to conserve her resources we will do the  
17 minimum required. Accordingly, we will make ourselves available for a Rule 26(f)  
18 conference on or around November 29, the deadline set by Judge Coughenour, but  
19 not before

20           Fantagraphics notes, and has reminded Ms. Ferris' lawyers, that the Court's Local Rules  
21 declare that "It is the obligation of all counsel, as officers of the court, to work toward the prompt  
22 completion of each case . . . "

23                   B.       *Ms. Ferris's Position.*

24           If the Parties are unable to settle during a court-ordered mediation session, Ms. Ferris  
25 believes the case can be ready for trial in February 2023. A race to trial will crush Ms. Ferris  
26 financially, and Ms. Ferris believes that it is in the Parties' and the Court's best interest to proceed  
at a more measured pace than that recommended by Fantagraphics.

1 As noted above, Ms. Ferris believes that the declaratory relief claims can be determined by  
2 the Court on cross motions for summary judgment, making trial on those claims unnecessary. If  
3 Fantagraphics feels it has the discovery it needs to make a motion for summary judgment by June  
4 2022, it is of course welcome to do so. But a June trial date on all issues would be exceptionally  
5 difficult for Ms. Ferris, both financially and emotionally.

6 **c. Length of Trial**

7 **A. *Fantagraphics' Position.***

8 Fantagraphics believes the trial will require between three and five days.

9 **B. *Ms. Ferris's Position.***

10 Ms. Ferris believes that the declaratory relief claims, which are equitable in nature, should  
11 be tried separately from the legal claims if they survive summary judgment. She believes a bench  
12 trial on the declaratory relief claims will take one to two days. A jury trial on the remaining legal  
13 claims will take two to three days.

1 Dated: December 13, 2021

BY: /s/ Lauren Watts Staniar

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9 Dated: December 13, 2021

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**CERTIFICATE OF SERVICE**

I certify under penalty of perjury that on December 13, 2021, I filed the foregoing document via CM/ECF, which effected service on all counsel of record.

Dated: December 13, 2021

*s/ Lauren Watts Staniar*

Lauren Watts Staniar